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Attorneys for Creditor  
CATHAY BANK

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

IN RE:

MARTIFER AURORA SOLAR, LLC, a  
Nevada limited liability company,

- ☐ Affects Martifer Aurora Solar, LLC  
☐ Affects Martifer Solar USA, Inc.  
☒ Affects All Debtors

Case No. BK-S-14-10355-abl  
and BK-S-14-10357-abl

Jointly Administered under  
Case No. BK-S-14-10355-abl

Chapter 11

**CATHAY BANKS' OPPOSITION TO  
THE APPLICATION FOR ORDER  
AUTHORIZING RETENTION AND  
EMPLOYMENT OF FOX  
ROTHSCHILD LLP AS DEBTORS'  
COUNSEL, NUNC PRO TUNC TO  
THE PETITION DATE**

**Date: March 10, 2014**  
**Time: 9:30 a.m.**

Cathay Bank ("Bank") objects to the Application for Order Authorizing Retention and  
Employment of Fox Rothschild LLP ("Fox") as Debtors' Counsel, Nunc Pro Tunc to the Petition

1 Date [Dkt. 134] (the “Motion) to the extent the Motion seeks to employ non-Fox attorney,  
 2 Nathan A. Schultz, Esq. (“Schultz”).

3 Both 11 U.S.C. § 327 (“section 327”) and F.R.B.P. 2014 (“rule 2014”) generally require  
 4 the Bankruptcy Court’s approval of the estate’s employment of counsel. *See* section 327 and  
 5 rule 2014. Specifically, those sections, in pertinent part, state:

6 **§ 327. Employment of professional persons**

7 Except as otherwise provided in this section, the trustee, with the  
 8 court's approval, may employ one or more attorneys, accountants,  
 9 appraisers, auctioneers, or other professional persons, that do not  
 10 hold or represent an interest adverse to the estate, and that are  
 11 disinterested persons, to represent or assist the trustee in carrying  
 12 out the trustee's duties under this title.

11 11 U.S.C. § 327.

12 **Rule 2014. Employment of Professional Persons**

13 (a) Application for an order of employment

14 An order approving the employment of attorneys, accountants,  
 15 appraisers, auctioneers, agents, or other professionals pursuant to §  
 16 327, § 1103, or § 1114 of the Code shall be made only on  
 17 application of the trustee or committee. The application shall be  
 18 filed and, unless the case is a chapter 9 municipality case, a copy  
 19 of the application shall be transmitted by the applicant to the  
 20 United States trustee. The application shall state the specific facts  
 21 showing the necessity for the employment, the name of the person  
 22 to be employed, the reasons for the selection, the professional  
 23 services to be rendered, any proposed arrangement for  
 24 compensation, and, to the best of the applicant's knowledge, all of  
 25 the person's connections with the debtor, creditors, any other party  
 26 in interest, their respective attorneys and accountants, the United  
 27 States trustee, or any person employed in the office of the United  
 28 States trustee. The application shall be accompanied by a verified  
 statement of the person to be employed setting forth the person's  
 connections with the debtor, creditors, any other party in interest,  
 their respective attorneys and accountants, the United States  
 trustee, or any person employed in the office of the United States  
 trustee.

(b) Services rendered by member or associate of firm of attorneys  
 or accountants

If, under the Code and this rule, a law partnership or corporation is  
 employed as an attorney, or an accounting partnership or  
 corporation is employed as an accountant, or if a named attorney or  
 accountant is employed, any partner, member, or regular associate  
 of the partnership, corporation or individual may act as attorney or  
 accountant so employed, without further order of the court.

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1 Fed. R. Bankr. P. 2014. Courts have found that the requirements of section 327 and rule 2014  
 2 also apply to contract attorneys. *See In re Ferguson*, 445 B.R. 744, 754-55 (Bankr. N.D. Tex.  
 3 2011(internal citations omitted).

4 Here, the Motion seeks to employ Fox and states only the following regarding Schultz:

5 33. In addition, Debtors understand that Fox Rothschild, from  
 6 time to time, utilizes the services of outside attorneys employed on  
 7 a contract basis. (Bernhart Declaration, ¶45; Axelrod Verified  
 8 Statement, ¶31). Prior to the Petition Date, Fox Rothschild utilized  
 9 the services of Nathan A. Schultz of the Law Office of Nathan A.  
 10 Schultz, P.C. (the “Schultz Firm”) in connection with its  
 11 representation of Debtors. (Axelrod Verified Statement, ¶31).  
 12 Debtors understand that Fox Rothschild anticipates continuing to  
 13 utilize the services of the Schultz Firm on the same contract basis  
 14 in connection with its representation of Debtors in these  
 15 Chapter 11 Cases. (Bernhart Declaration, ¶45; Axelrod Verified  
 16 Statement, ¶31). Fox Rothschild bills Debtor for Mr. Schultz’s time  
 17 as legal services, not as an expense, at an hourly rate (\$525) that is  
 18 commensurate with the rates of Fox Rothschild attorneys of similar  
 19 seniority and experience. (Axelrod Verified Statement, ¶31).

20 Motion, pg. 11, ¶33. This paragraph alone does not satisfy section 327 or rule 2014. In fact,  
 21 neither the Motion, nor its supporting Declarations, seek separate employment of Schulz or  
 22 address any of the prerequisites of section 327 or rule 2014 with respect to Schultz. As such, the  
 23 Motion should be denied with respect to Schultz.

24 Likewise, the Court should deny the Motion with respect to Schultz because his services  
 25 do not promote efficiency or result in cost-savings to the estate. As one court has noted, “[i]t  
 26 makes sense to allow law firms to employ contract attorneys where doing so would promote  
 27 efficiency and ultimately result in cost-savings being passed on to clients.” *In re Ferguson*, 445  
 28 B.R. 744, 756 (Bankr. N.D. Tex. 2011).

Here, Schultz’s services have the opposite effect of resulting in inefficiency and  
 duplication of costs to estates that are administratively insolvent. As noted throughout the  
 Motion and the supporting Declarations, Fox is a well-respected firm with an impressive  
 bankruptcy department, and the list of Fox attorneys and paraprofessionals listed as proposed  
 counsel for the Debtors demonstrates that Fox is well staffed for the case without Schultz<sup>1</sup>. *See*

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<sup>1</sup> Based on his involvement in Court to date, it does not appear that Schultz was hired for his special expertise. As the Court will recall, Schultz argued some of the First Day Motions which any one of the Fox attorneys were qualified to handle.

1 Motion, pg. 10. There is no explanation in the Motion as to the efficiencies or cost savings  
2 provided by Schultz. In fact, at first blush it stands to reason that the mere fact that his offices  
3 are located out of state adds unneeded expenses to the estates. Unless and until Schulz satisfies  
4 section 327 and rule 2014, and proves that his services promote efficiency and result in cost-  
5 savings to the estate, the Motion should be denied.

6 In light of the foregoing, the Bank respectfully requests that the Court deny the Motion as  
7 to Schultz.

8 DATED this 24<sup>th</sup> day of February, 2014.

9 **KOLESAR & LEATHAM.**

10  
11 By: /s/ Natalie M. Cox, Esq.

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